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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,429	07/03/2003	Dieter Herwig	17128.003001	5115

7590

10/10/2006

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EXAMINER
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DWIVEDI, VIKANSHA S

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/613,429

Applicant(s)

HERWIG ET AL.

Examiner

Vikansha S. Dwivedi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on July 5, 2006
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### ***Response to Arguments***

With regard to applicants argument that none of the references show the features of Claim 1 (As of Page 6 of the Remarks 1<sup>st</sup> and 2<sup>nd</sup> paragraph), it should be clear that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *IN RE KELLER*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *IN RE MERCK & CO.*, 800 F.2d 1091, 231 USPQ 375 (FED. CIR. 1986).

With regard to applicants argument that there are no bearings disclosed by Heminway et al. Heminway et al. does not describe the bearings in detail but would appear to be an inherent feature. Borsanyi or European patent application provides

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detailed structure and teachings for using bearings in a peristaltic pump structure (Borsanyi: Column 3 lines 55-65 and Figure 4, it can also be seen in Figure 2 of the European patent application). The eccentric discs form the inner rings of ball bearings (Figure 4 and 5 of Borsanyi) in order to reduce the friction of rotation.

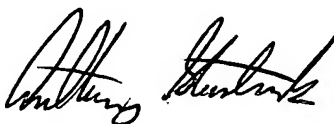
With regard to applicants argument that there is no teaching, for sealing diaphragm, provided by Heminway et al. Heminway et al. does not teach a sealing diaphragm disposed between the shaft and the pump hose, wherein the connecting rods pass through the sealing diaphragm, wherein the sealing diaphragm comprises lateral folds permitting an adaptation to the transverse movements of the connecting rod. Von Der Heyde et al. or Robinson teach a sealing diaphragm (39 Figure 1: Von Der Heyde et al., and Figure 7(a) and 7(b): Robinson) disposed between the shaft (10: Von Der Heyde et al. and 164: Robinson), wherein the connecting rods pass through the sealing diaphragm (Figure 1: Von Der Heyde et al., and Figure 7(a) and 7(b): Robinson); wherein the sealing diaphragm comprises lateral folds permitting an adaptation to the transverse movements of the connecting rod. Von Der Heyde et al. provides detailed teaching of the membrane usage to prevent leakages into the drive system (Column 10, lines 44-57). At the time of invention it would have been obvious to one of ordinary skill in the art to use the teachings of Borsanyi or the European patent application in view of Von Der Heyde et al. or Robinson to improve the peristaltic pump as presented by Heminway to provide better sealing by preventing the fluids from flowing into the drive system and to reduce the torque and thus protecting the tube or the said pump hose.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vikansha S. Dwivedi whose telephone number is 571-272-7834. The examiner can normally be reached on M-F, 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy S. Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VSD



ANTHONY D. STASHICK  
PRIMARY EXAMINER